IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 713 of 2000
in
SPECIAL CIVIL APPLICATION NO 8873 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PORT OFFICER

Versus

SOMNATH ICE FACTORY THROUGH RAJESH K GOHEL

Appearance:
1. LETTERS PATENT APPEAL No. 713 of 2000
MR PR NANAVATI for Appellant No.
MR YOGESH S LAKHANI for Respondent No. 1
MR RD DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 14/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellant - Gujarat Maritime Board (for short "the Board") has filed this Letters Patent Appeal against the Judgment and order dated 11.10.2000 passed by the learned Single Judge of this Court (M.S.Shah, J.), partly allowing Special Civil Application No.8873 of 2000 filed by the respondent - original petitioner.

2. Shreenathji Ice Industry was initially granted lease of plot No.B-37 at Veraval Port, by the Port Officer of the Appellant - Board for the period from 11.11.1995 to 10.1.2000. It had paid the rent upto 10.1.1996. Thereafter, it remained in arrears. It had taken loan from G.S.F.C. Since the said party did not repay the loan the G.S.F.C. exercised its power u/s. 29 of the State Financial Corporation Act, 1951 and put the plot to auction. The present respondent - original petitioner Somnath Factory offered the highest bid at the auction sale conducted by the G.S.F.C. and accordingly the G.S.F.C. informed the Port Officer of the Board to transfer the property in favour of the respondent original petitioner. However, the Port Officer of the Board in his letter dated 20.12.1998 stipulated the following conditions before accepting the request of transfer, which are as under :

(a) Arrears of rent to the tune of Rs.41,265/- were outstanding from the previous party (shrinath Ice Industries) for the plot in question from 11.1.96 to 10.1.2000, the amount be paid with interest at the rate of 12 % p.a.

(b) As per the prevailing schedule of Port charges the transfer fee of Rs.1,67,500/- (500 % of the actual rent) was also required to be paid;

(c) NOC from GSFC was required.

The respondent - petitioner challenged the aforesaid two conditions, viz. conditions (a) & (b), by way of Special Civil Application No.8873 of 2000.

3. Before the learned Single Judge, regarding first condition it was contended that the auction purchaser, at public auction held by G.S.F.C., was not required to pay the dues of previous owner as there was no condition mentioned in the advertisement by which the auction purchaser was required to pay the dues of that previous owner. In support of this submission, reliance was place on the Judgment of the Hon'ble Supreme Court in the case of ISHA MARBLES v/s. BIHAR STATE ELECTRICITY BOARD, reported in 1995 (2) GLH 134.

4. The second contention raised before the learned Single Judge was that the petitioner was not liable to pay the transfer fee because it was not getting transfer from the previous owner and that it was a statutory transfer by the G.S.F.C. u/s.29 of the State Financial Corporation Act.

The learned Single Judge, after hearing the learned Counsel for the parties, came to the conclusion that the petitioner cannot be made liable to pay arrears of rent which were due from the previous owner i.e. Vinayak Ice Industry in view of the Judgment of the Hon'ble Supreme Court in Isha Marbles case (supra). For arriving at this conclusion, the learned Single Judge observed that no collusion was alleged between between the previous owner and the petitioner and there was nothing on record to show that in the public advertisement or subsequent agreement the auction purchaser was required to clear the dues of the previous owner. The learned Single Judge also found that for the first time by way of impugned notice/letter dated 27.12.1996 the demand was made by the Port Officer of the Board from the petitioner calling upon it to pay the amount due from the previous Owner by way of rent.

In view of the above, the learned Single Judge held that the first condition (a) mentioned in the impugned Notice/letter dated 27.12.1998 was bad and illegal. Accordingly, the petition was partly allowed to that extent only by the learned Single Judge and it was held that the demand made by the Port Officer for the arrears of rent of the previous owner (Shreenathji Ice Industry) for the period from 11.1.1996 to 10.1.2000 was bad and illegal and the Board (present Appellant) was restrained from making any such demand from the petitioner. Rest of the prayers made by the petitioner in petition was not granted and accordingly to that extent was dismissed.

5. Aggrieved by the aforesaid part of the order passed by the learned Single Judge of this Court, partly allowing the petition and restraining the Board from recovering the arrears of rent from the respondent - original petitioner of the previous owner (shreenathji Ice Industry), for the period from 11.1.1996 to 10.1.2000 the Appellant Board has filed this Appeal.

6. Learned Counsel Shri Nanavati for the Appellant - Board vehemently submitted that the learned Single Judge has committed grave error in partly allowing the petition

of the respondent - petitioner in view of the Judgment of the Hon'ble Supreme Court in Isha Marble case (supra). In support of his submission Shri Nanavati for the Appellant tried to rely upon the Agreement entered into between G.S.F.C. and the original petitioner.

7. We have carefully gone through the Judgment and order passed by the learned Single Judge, partly allowing the petition, filed by the respondent petitioner. It is clear from the record of this case as well as the Judgment and order passed by the learned Single Judge that there was no collusion between the previous owner Shreenathji Ice Industry and the respondent - petitioner and nothing was mentioned in the public advertisement. In that view of the mater, we are of the clear opinion that the Judgment of the Hon'ble Supreme Court in the case of Isha Marble (supra) is squarely applicable and the same was rightly relied upon by the learned Single Judge.

8. Before parting, we must state that learned Counsel Shri Nanavati for the Appellant - Baord tried to raise contention before us which was never raised before the learned Single Judge, therefore, we have refrained ourselves from dealing with the said contention in view of the Judgment of the Hon'ble Supreme Court in the case of STATE OF MAHARASHTRA v/s. RAMDAS SHRINIVAS NAYAK, reported in AIR 1982 SC 1249.

9. In view of the above discussion, this Appeal fail and is hereby dismissed with no order as to costs.

However, the request of Shri Nanavati to continue the interim relief, granted earlier, in Civil Application No.10353 of 2000 has to be rejected because it is against their own interest. In fact so far the Appellant Board has suffered a loss of revenue by not accepting the Judgment of the learned Single Judge. Accordingly, the request of Shri Nanavati to continue the interim relief is rejected.

(B.J. Shethna, J.)

Date : October 14, 2003

(Ravi R.Tripathi,J.)

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